

Montana Water Court  
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MONTANA WATER COURT, UPPER MISSOURI DIVISION  
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

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CLAIMANTS: Tyler D. Graham; Tina L. Hoskins

**CASE 41Q-0125-I-2023**

41Q 30138195

41Q 30138197

41Q 30138199

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Tyler D. Graham and Tina L. Hoskins are the record owners of claims 41Q 30138195, 41Q 30138197, and 41Q 30138199.

2. Claims 41Q 30138195, 41Q 30138197, and 41Q 30138199 were decreed with DNRC issue remarks:

**Claim 41Q 30138195:**

THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.  
THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DEVELOPED SPRING CANNOT BE IDENTIFIED FROM AVAILABLE DATA.  
THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.  
THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS 1920 OR 1908.  
THE CLAIMED PURPOSE (USE) COULD NOT BE IDENTIFIED DUE TO LACK OF DATA. THE CLAIMED PURPOSE (USE) CANNOT BE CONFIRMED DUE TO LACK OF DATE.  
THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

**41Q 30138197:**

THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS 1920 OR 1908.

**41Q 30138199:**

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE SPRING BOX CANNOT BE IDENTIFIED FROM AVAILABLE DATA.  
THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.  
THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS 1920 OR 1908.

3. The Claimants were ordered to meet with a DNRC employee to address the issue remarks.

4. On June 28, 2023, DNRC Water Resource Specialist Aamna K. Flemmer filed a Memorandum stating she discussed the issue remarks with Claimant Tina L. Hoskins. (Doc.<sup>1</sup>2.00). Ms. Flemmer reported that Ms. Hoskins submitted documentation supporting the claims and copies of the documents were attached to the Memorandum. In addition to the information provided by Ms. Hoskins, Ms. Flemmer reviewed the scanned claim files and homestead certificate no. 1786 to provide her recommendations.

5. Claims 41Q 30138195, 41Q 30138197, and 41Q 30138199 were claimed with and decreed with January 1, 1920 priority dates. Ms. Flemmer confirmed that based on homestead certificate no. 1786, the priority date for claims 41Q 30138195, 41Q 30138197, and 41Q 30138199 should be January 23, 1908.

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

6. Claims 41Q 30138195 and 41Q 30138199 were decreed with point of diversion issue remarks. Based on information provided by Ms. Hoskins, Ms. Flemmer indicated the point of diversion and place of use legal land descriptions for both claims should be modified to reflect the location of spring boxes in the NWSWNW of Section 1, Township 21 North, Range 3 East, Cascade County.

7. An Order was issued setting a July 31, 2023 deadline for Claimants Tyler D. Graham and Tina L. Hoskins to file statements agreeing or disagreeing that claims 41Q 30138195, 41Q 30138197, and 41Q 30138199 be modified as follows:

**41Q 30138195:**

Priority Date: ~~JANUARY 1, 1929~~ JANUARY 23, 1908

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	NWSWNW	SWNNW	1	21N	3E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	5.00	NWSWNW	SWNNW	1	21N	3E	CASCADE
Total:	5.00						

**41Q 30138197:**

Priority Date: ~~JANUARY 1, 1929~~ JANUARY 23, 1908

**41Q 30138199:**

Priority Date: ~~JANUARY 1, 1929~~ JANUARY 23, 1908

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	NWSWNW	SWNNW	1	21N	3E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWNW	SWNNW	1	21N	3E	CASCADE

(Doc. 3.00). The Order stated that if nothing were filed by the deadline, this Master would conclude the Claimants agree with the proposed changes. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim.  
Section 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.
3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.
4. In addition to the issue remarks listed in Finding of Fact No. 3, the claims in this Case were also decreed with an issue remark indicating the claims were not included in the 41Q decree issued on May 27, 2010. The issue remark is a notice-type issue remark, as no objections were filed, no further proceedings are required.

### RECOMMENDATION

1. Claims 41Q 30138195, 41Q 30138197, and 41Q 30138199 should be modified as shown in Finding of Fact No. 7.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Tyler D. Graham  
Tina L. Hoskins  
P.O. Box 603  
Black Eagle, MT 59414

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30138195 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TYLER D GRAHAM  
PO BOX 603  
BLACK EAGLE, MT 59414 0603  
  
TINA L HOSKINS  
PO BOX 603  
BLACK EAGLE, MT 59414 0603

**Priority Date:** JANUARY 23, 1908

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 10.00 AC-FT

**Households:** 1

**Maximum Acres:** 5.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BLACK HORSE LAKE

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	1	21N	3E	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		NWSWNW	1	21N	3E	CASCADE

**Total:** 5.00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30138197 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TYLER D GRAHAM  
PO BOX 603  
BLACK EAGLE, MT 59414 0603

TINA L HOSKINS  
PO BOX 603  
BLACK EAGLE, MT 59414 0603

**Priority Date:** JANUARY 23, 1908

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF BLACK HORSE LAKE

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNW	1	21N	3E	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNW	1	21N	3E	CASCADE

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, FROM SUN TO MARIAS RIVERS**  
**BASIN 41Q**

**Water Right Number:** 41Q 30138199 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** TYLER D GRAHAM  
PO BOX 603  
BLACK EAGLE, MT 59414 0603

TINA L HOSKINS  
PO BOX 603  
BLACK EAGLE, MT 59414 0603

**Priority Date:** JANUARY 23, 1908

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 20.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BLACK HORSE LAKE

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNW	1	21N	3E	CASCADE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSWNW	1	21N	3E	CASCADE